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Fifth report on reservations to treaties

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Addendum

Annex

Definitions

Consolidated text of all draft guidelines dealing with definitions adopted on first reading or proposed in the fifth report[1]

1.1 Definition of reservations[2]

"Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

1.1.1 Object of reservations[3]

A reservation purports to exclude or modify the legal effect of certain provisions of a treaty or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation.

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[1] The text of the draft guidelines proposed in the fifth report appears in italics.

[2] For the commentary on this draft guideline, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10), pp. 196-199.

[3] For the commentary on this draft guideline, see ibid., *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 210-217.

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1.1.2 Cases in which a reservation may be formulated[4]

The cases in which a reservation may be formulated contained in guideline 1.1 include all the means of expressing consent to be bound by a treaty referred to in article 11 of the Vienna Conventions of 1969 and 1986 on the law of treaties.

1.1.3 Reservations having territorial scope[5]

A unilateral statement by which a State purports to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement, constitutes a reservation.

1.1.4 Reservations formulated when notifying territorial application[6]

A unilateral statement by which a State purports to exclude or to modify the legal effect of certain provisions of the treaty in relation to a territory in respect of which it makes a notification of the territorial application of the treaty constitutes a reservation.

1.1.5 Statements purporting to limit the obligations of their author[7]

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty by which its author purports to limit the obligations imposed on it by the treaty constitutes a reservation.

1.1.6 Statements purporting to discharge an obligation by equivalent means[8]

A unilateral statement formulated by a State or an international organization when that State or that organization expresses its consent to be bound by a treaty by which that State or that organization purports to discharge an obligation pursuant to the treaty in a manner different from but equivalent to that imposed by the treaty constitutes a reservation.

1.1.7 Reservations formulated jointly[9]

The joint formulation of a reservation by a number of States or international organizations does not affect the unilateral nature of that reservation.

1.1.8 Reservations formulated under exclusionary clauses[10]

A unilateral statement made by a State or an international organization when expressing its consent to be bound by a treaty or by a State when making a notification of succession, in accordance with a clause in the treaty expressly

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[4] For the commentary on this draft guideline, see ibid., *Fifty-third Session, Supplement No. 10* (A/53/10), pp. 204-206.

[5] For the commentary on this draft guideline, see ibid., pp. 206-209.

[6] For the commentary on this draft guideline, see ibid., pp. 209-210.

[7] For the commentary on this draft guideline, see ibid., *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 217-221.

[8] For the commentary on this draft guideline, see ibid., pp. 222-223.

[9] For the commentary on this draft guideline, see ibid., *Fifty-third Session, Supplement No. 10* (A/53/10), pp. 210-213.

[10] Concerning this draft guideline, see the present report, paras. 148-178.

authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty in their application to those parties constitutes a reservation.

1.2 Definition of interpretative declarations[11]

"Interpretative declaration" means a unilateral statement, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions.

1.2.1 Conditional interpretative declarations[12]

A unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof, shall constitute a conditional interpretative declaration.

1.2.2 Interpretative declarations formulated jointly[13]

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral nature of that interpretative declaration.

1.3 Distinction between reservations and interpretative declarations[14]

The character of a unilateral statement as a reservation or an interpretative declaration is determined by the legal effect it purports to produce.

1.3.1 Method of implementation of the distinction between reservations and interpretative declarations[15]

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, it is appropriate to interpret the statement in good faith in accordance with the ordinary meaning to be given to its terms, in the light of the treaty to which it refers. Due regard shall be given to the intention of the State or the international organization concerned at the time the statement was formulated.

1.3.2 Phrasing and name[16]

The phrasing or name given to a unilateral statement provides an indication of the purported legal effect. This is the case in particular when a State or an international organization formulates several unilateral statements in respect of a

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[11] For the commentary on this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 223-240.

[12] For the commentary on this draft guideline, see ibid., pp. 240-249.

[13] For the commentary on this draft guideline, see ibid., pp. 249-252.

[14] For the commentary on this draft guideline, see ibid., pp. 252-253.

[15] For the commentary on this draft guideline, see ibid., pp. 254-260.

[16] For the commentary on this draft guideline, see ibid., pp. 260-266.

single treaty and designates some of them as reservations and others as interpretative declarations.

1.3.3 Formulation of a unilateral statement when a reservation is prohibited[17]

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect thereof by a State or an international organization shall be presumed not to constitute a reservation except when it purports to exclude or modify the legal effect of certain provisions of the treaty or of the treaty as a whole with respect to certain specific aspects in their application to its author.

1.4 Unilateral statements other than reservations and interpretative declarations[18]

Unilateral statements formulated in relation to a treaty which are not reservations or interpretative declarations are outside the scope of the present Guide to Practice.

1.4.1 Statements purporting to undertake unilateral commitments[19]

A unilateral statement formulated by a State or an international organization in relation to a treaty, whereby its author purports to undertake obligations going beyond those imposed on it by the treaty constitutes a unilateral commitment which is outside the scope of the present Guide to Practice.

1.4.2 Unilateral statements purporting to add further elements to a treaty[20]

A unilateral statement whereby a State or an international organization purports to add further elements to a treaty constitutes a proposal to modify the content of the treaty which is outside the scope of the present Guide to Practice.

1.4.3 Statements of non-recognition[21]

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize constitutes a statement of non-recognition which is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

1.4.4 General statements of policy[22]

A unilateral statement formulated by a State or by an international organization whereby that State or that organization expresses its views on a treaty or on the subject matter covered by the treaty, without purporting to produce a legal effect on the treaty, constitutes a general statement of policy which is outside the scope of the present Guide to Practice.

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[17] For the commentary on this draft guideline, see ibid., pp. 266-268.
[18] For the commentary on this draft guideline, see ibid., pp. 268-270.
[19] For the commentary on this draft guideline, see ibid., pp. 270-273.
[20] For the commentary on this draft guideline, see ibid., pp. 273-274.
[21] For the commentary on this draft guideline, see ibid., pp. 275-280.
[22] For the commentary on this draft guideline, see ibid., pp. 280-284.

1.4.5 Statements concerning modalities of implementation of a treaty at the internal level[23]

A unilateral statement formulated by a State or an international organization whereby that State or that organization indicates the manner in which it intends to implement a treaty at the internal level, without purporting to affect its rights and obligations towards the other contracting parties, constitutes an informative statement which is outside the scope of the present Guide to Practice.

1.4.6 Unilateral statements adopted under an optional clause[24]

A unilateral statement made by a State or an international organization in accordance with a clause in a treaty expressly authorizing the parties to accept an obligation that is not imposed on them solely by the entry into force of the treaty is outside the scope of the present Guide to Practice.

1.4.7 Restrictions contained in unilateral statements adopted under an optional clause[25]

A restriction or condition contained in a unilateral statement adopted under an optional clause does not constitute a reservation within the meaning of the present Guide to Practice.

1.4.8 Unilateral statements providing for a choice between the provisions of a treaty[26]

A unilateral statement made by a State or an international organization in accordance with a clause contained in a treaty that expressly requires the parties to choose between two or more provisions of the treaty is outside the scope of the present Guide to Practice.

1.5 Unilateral statements in respect of bilateral treaties

1.5.1 "Reservations" to bilateral treaties[27]

A unilateral statement, however phrased or named, formulated by a State or an international organization after initialling or signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty to which it is subjecting the expression of its final consent to be bound, does not constitute a reservation within the meaning of the present Guide to Practice.

1.5.2 Interpretative declarations in respect of bilateral treaties[28]

Draft guidelines 1.2 and 1.2.1 are applicable to interpretative declarations in respect of multilateral as well as bilateral treaties.

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[23] For the commentary on this draft guideline, see ibid., pp. 284-289.

[24] Concerning this draft guideline, see the present report, paras. 179-189.

[25] Concerning this draft guideline, see ibid., paras. 190-196.

[26] Concerning this draft guideline, see ibid., paras. 197-210.

[27] For the commentary on this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 290-302.

[28] For the commentary on this draft guideline, see ibid., pp. 302-306.

1.5.3 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party[29]

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to a treaty and accepted by the other party constitutes the authentic interpretation of the treaty.

1.6 Scope of definitions[30]

The definitions of unilateral statements included in the present chapter of the Guide to Practice are without prejudice to the permissibility and effects of such statements under the rules applicable to them.

1.7 Alternatives to reservations and interpretative declarations

1.7.1 Alternatives to reservations[31]

In order to modify the effects of provisions of a treaty in their application to the contracting parties, States and international organizations may make use of procedures other than reservations.

1.7.2 Different procedures permitting modification of the effects of the provisions of a treaty[32]

Modification of the effects of the provisions of a treaty by procedures other than reservations may result in the inclusion in the treaty of:

- *Restrictive clauses that limit the object of the obligations imposed by the treaty by making exceptions and setting limits thereto;*
- *Escape clauses that allow the contracting parties not to apply general obligations in specific instances and for a specific period of time;*
- *Statements made under the treaty by which a contracting party expresses its willingness to be bound by obligations that are not imposed on it solely by its expression of its consent to be bound by the treaty.*

Modification of the effects of the provisions of a treaty may also result in:

- *Their suspension, in accordance with the provisions of articles 57 to 62 of the 1969 and 1986 Vienna Conventions;*
- *Amendments to the treaty entering into force only for certain parties; or*
- *Supplementary agreements and protocols purporting to modify the treaty only as it affects the relations between certain parties.*

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[29] For the commentary on this draft guideline, see ibid., pp. 306 and 307.
[30] For the commentary on this draft guideline, see ibid., pp. 308-310.
[31] Concerning this draft guideline, see the present report, paras. 72-94.
[32] Concerning this draft guideline, see ibid., paras. 72-95.

1.7.3 Restrictive clauses[33]

A provision in a treaty that purports to limit or restrict the scope or application of more general rules contained in the treaty does not constitute a reservation within the meaning of the present Guide to Practice.

1.7.4 ["Bilateralized reservations"] [Agreements between States having the same object as reservations][34]

An agreement[, concluded under a specific provision of a treaty,] by which two or more States purport to exclude or to modify the legal effect of certain provisions [of the] [of a] treaty or of the treaty as a whole in their application to their relations inter se *does not constitute a reservation within the meaning of the present Guide to Practice.*

1.7.5 Alternatives to interpretative declarations[35]

In order to specify or clarify the meaning or scope of a treaty or certain of its provisions, the contracting parties may have recourse to procedures other than interpretative declarations. They may include in the treaty express provisions whose purpose is to interpret the treaty or may conclude supplementary agreements to that end.

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[33] Concerning this draft guideline, see ibid., paras. 110-116.

[34] Ibid., paras. 117-130.

[35] Concerning this draft guideline, see ibid., paras. 96-103.